shows a still more striking decrease from 1880 to 1890. The Massachusetts factory inspector reports separately the number of children employed in the factories of that state, from 14 to 16 and those under 14. Of the 9919 employed in 1890, 8263 were from 14 to 16, and but 1656 were under 14. This is a proportion of 5 to 1. In 1891 the proportion shown is 6.6 to 1. If we accept this proportion as at all representative, we have the following problem. If child workers from 14 to 16 outnumber child workers under 14 as 5 or 6 to 1, what proportion would child workers from 14½ to 16 be to those under 14½? If we conclude that the number of the older children are no more than double those under 14½, we should have to add 200, instead of 40 per cent., to the number 603,013, making the total number, in 1890, over 1.8 million, instead of 860,786, as Mr. Wright surmises. This is also but a guess, but it agrees with observation, and also with the recent investigation of the Department of Labor as to the employment of children. It is curious to note that Mr. Wright, in discussing the child-labor problem, makes no reference to this investigation of his own department. This calls to mind that in that report Mr. Wright quoted these same dubious census statistics to discredit the results of the investigation of the Department of Labor, which, if it may be accepted as showing anything whatever, indicates a very decided increase in the employment of children.

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THE APPLICATION OF THE ANTI-TRUST LAW.

I take the liberty of calling attention to an error in Mr. Robinson's paper on "Organized Labor and Organized Capital" in this Journal for June 1899. He says (p. 338) of the Sherman anti-trust act:

> So broad are the terms of the act just quoted that it has often been pointed out that they would in fact, if strictly interpreted, operate to forbid labor organization. But no attempt has been made to prove that point—for the simple reason that it is assured in advance that, if it was found that the law did forbid such combinations, Congress would promptly amend it.

There seems to be in the writer's mind the impression which Mr. F. J. Stimson expresses in his *Labor in its Relations to Law*, and which ex-Senator Manderson expressed in his recent address before the American Bar Association, that the law has gone very far toward making the industrial classes privileged. General Manderson was a member of the

Senate when the anti-trust act of 1890 was passed, but he must have forgotten the debates on the bill and Judge Billings's application of it to strikers, for in his address before the Bar Association he remarked on the absence of legislation in restraint of combinations of labor, when there is so much legislation, or popular demand for legislation, in restraint of combinations of capital.

The debates on the anti-trust law will show, that in the shape in which the bill was reported back from the committee to the Senate, it was as applicable to combinations of labor as to those of capital. Senators Teller and George pointed this out as an objection, and my recollection is that Senator Edmunds recognized it as one of the merits of the bill. Judge Billings applied the law to a labor combination, and said that the congressional debates showed that that was its purpose. In November 1892 there was a strike in New Orleans growing out of difficulties between the warehouse men and the draymen and their employees. The labor organizations were trying to force their recognition. An application was made before Judge Billings of the United States district court to enjoin the unions on the ground that they were combinations in restraint of trade. His decision was rendered March 25, 1893, and is to be found in United States against the Workingmen's Amalgamated Council of New Orleans, 54 Federal Reporter 995:

> The bill of complaint in this case is filed by the United States under the Act of Congress entitled "An act to protect trade and commerce against unlawful restraint and monopolies." (26 *Statutes at Large* 209). . . . I think the congressional debates show that the statute had its origin in the evils of massed capital, but, when Congress came to formulating the prohibition which is the yardstick for measuring the complainant's right to the injunction, it expressed it in these words: "Every contract or combination in the form of a trust, or otherwise, in restraint of trade or commerce among the several states or with foreign nations is hereby declared to be illegal." The subject had so broadened in the minds of the legislators that the source of the evil was not regarded as material, and the evil in its entirety is dealt with. They made the interdiction include combinations of labor as well as of capital.

And the injunction was granted although the strike had long before been settled.

If it were a fact that there are fewer restrictions upon combinations of labor than upon combinations of capital, it would be sufficiently explained by the fact that most of the ways whereby a labor union can

make itself effective are already illegal. But it is a mistake to suppose there are any serious restraints upon combinations of capital. A joint stock company is a combination of capital, and the law offers the capitalists a limitation of their liability as an inducement to combine. While the trust, technically speaking, has been held to be unlawful, there is practically no limitation upon combination by absorption. I am far from saying that there ought to be; I am not greatly alarmed at the present manifestation of the tendency to combine; but it is absurd to represent that the law is discriminating in favor of labor and against capital when the United States courts applied the anti-trust law of 1890 to a labor union in New Orleans and were unable to make it fit the Sugar Trust in the Philadelphia case.

Massachusetts created a telephone company to do business in every state except the one that created it; Delaware created a gas corporation to do business in Boston in defiance of Massachusetts law. New Jersey and Delaware are now in hot competition for the profits of creating corporations to do business is other states, chiefly New York. The Federal courts have broken down some of the means whereby states have attempted to protect themselves from foreign corporations. This year will long remain notable for the number of trusts, so-called, created in it. It is a strange time to complain of the restrictions upon combinations of capital.

Most of the agencies whereby a labor union can make itself effective are illegal at common law, in spite of some modifications effected by recent legislation; more so in England, as Mr. Stimson points out, than in the United States. But there is a disposition to refer to the common law as though it were the decalogue or some other expression of the higher law. The common law is a mass of precedents and decisions accumulated during a period when agricultural labor was in a state of serfdom and industrial labor was subject to a mass of legislation imposed for their own benefit by the classes who controlled the government and who bought labor and wished to buy it cheap. At most points where the common law touches the labor question it is unquestionably wise and fair, but statutes have replaced it in many respects, and they may do so further without justifying sneers of demagogery, "Whenever the legislature attempts to regulate the differences between masters and workmen," said Adam Smith, "its councillors are always the masters." That is not entirely true today, but it is still true in a considerable degree. The courts do not pretend to reach those agencies

by which combinations of capital make themselves effective, while they can easily send members of labor unions to prison for analogous acts. Within a few years courts have declared illegal the action of labor unions in punishing their members for working at less than the union rate of wages. Yet the New York Stock Exchange is a capital union which would punish the cutting of commissions by suspension from one to five years for the first offense and expulsion for the second. The New York Clearing House is a capital union which will impose a fine of $5000 upon any bank that shall collect a country check for less than a specified rate of compensation.

The objection to paying increased wages explains most of the hostility of employers to labor organizations, and underlies a good deal of legislation and more of judicial decision. In 1806 a committee of the House of Commons described the clothiers who were members of the "Institution" as "poor, deluded wretches," much as it is still customary to describe the members of labor unions, and especially denounced the "Institution" because "its inevitable, though gradual, result must be the progressive rise of wages among all classes of workmen." In 1824 a Parliamentary committee had the candor to report:

> That prosecutions have frequently been carried on under the statute and common law against the workmen, and many of them have suffered different periods of imprisonment for combining and conspiring to raise their wages, or to resist their reduction and to regulate their hours of working. That several instances have been stated to the committee of prosecutions against masters for combining to lower wages and to regulate the hours of working; but no instance has been adduced of any master having been punished for that offense.

What was regarded as the public interest was the immediate interest of the classes that buy labor, and therefore it was clear that every increase of wages was against the public interest. In *The People of New York against Fisher* (1835), Judge Savage asked if journeymen bootmakers, by extravagant demands for wages, so enchance the price of boots made in one place that boots elsewhere can be made cheaper, is not such an act injurious to trade?

A growing spirit of humanity and fair dealing, together with the teachings of experience that high-priced labor is usually cheaper than the low-priced, and that countries where labor is cheap are threatened by the competition of countries where labor is dear, has greatly modified this feeling of opposition to advances in wages, but every buyer of

labor is still opposed to anything that tends to raise the price of that commodity, and the habit of courts of relying on precedents gives a somewhat disproportionate authority to cases decided when the interests of those who had labor to sell were not considered by the men who made and interpreted the laws. It may easily be shown in economics that high wages are in the public interest, but if the judges so regarded it we should have a considerable change in the tenor of judicial decisions. With a degree of frankness not often encountered in his class, Lord Brassey said in a lecture in 1877:

> Much of the objection which exists in the public mind towards trade unions rests, as it must be confessed, on the general reluctance to see any effort made to raise the price of labor.

Lord Brassey has himself supplied, largely from his own and his father's experience, many striking evidences of the economy of high wages. A mass of such evidence has accumulated since. It does not incline, and of course it should not incline, any individual buyer of labor to pay for it more than the market price, and he would be something more than human if he were not generally complaining that the price was already too high; but with American competition as sharp in foreign markets as it is now one might suppose that the conception of the relation of the rate of wages to the general state of trade would undergo a change and that the agencies by which wages are advanced or sustained would seem less obviously "in restraint of trade," less palpably "against the public interest."

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NEW YORK.

AN ERROR IN AUSTRIAN WAGES STATISTICS.

IN his book on "The Population of Austria on the Basis of the Census Returns of December 31, 1890,"[1] Dr. Rauchberg, the then secretary of the central statistical commission, gives in condensed and convenient form for the general student the valuable results of the commission's work. This he does by means of many tables, summaries, charts, and diagram. The aim of the work, however, is not so much the making of a handbook as it is to show by comparison with the returns of previous enumerations the progress of the Austrian nation,

[1] *Bevölkerung Oesterreichs auf Grund der Ergebnisse der Volkszählung vom 31. December 1890.* DR. HEINRICH RAUCHBERG, Hofsecretär der K. K. statistischen Centralcommission, Wien, 1895.